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# STATE OF CONNECTICUT

## DEPARTMENT OF MOTOR VEHICLES

Rowland State Government Center, 55 West Main Street, Waterbury, CT 06702-2004

<http://dmvct.org>

2003 JUL -1 P 3:04



June 20, 2003

Docket Management System  
U.S. Department of Transportation  
Room Plaza 401  
400 Seventh Street, SW  
Washington, D.C. 20590-0001

Re: Docket Number TSA-2003-14610 - 25

The following are the comments of the State of Connecticut, Department of Motor Vehicles (CTDMV) on the interim final rules concerning the background check to obtain a hazardous materials endorsement for a commercial drivers license (CDL). We have several questions that we hope can be addressed in some manner. If changes or additions are not made in the rules, we believe that some form of official guidance from the Transportation Security Administration (TSA) is necessary concerning the points discussed below. We are also submitting similar comments to the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) on the related final rules that have been published under Docket Number 2001-11117.

We understand that many comments already have been offered by state officials on an informal basis, either through direct contact with the appropriate federal officials or through the active role that has been taken by the American Association of Motor Vehicle Administrators (AAMVA). The intent of this correspondence is not to repeat and duplicate issues and concerns that already have been discussed and addressed, but merely to highlight certain issues that, as far as we are aware, have not already been the subject of discussions and feedback from TSA and FMCSA representatives.

1. With regard to the new standard concerning citizenship status or permanent resident status, CTDMV agrees with the legal analysis of TSA that appears on page 23862 of the Federal Register Volume 68, Number 86, Monday, May 5, 2003. According to that analysis, the issuance of any CDL license to a person who is not a citizen of the United States or permanent resident alien is inconsistent with existing CDL requirements. More specifically, a person cannot have a "state of domicile" under 49 CFR 383.5 unless such person is, in fact, a permanent resident.

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However, the proposed regulation, Section 1572.105 (as well as the proposed amendment by FMCSA to Section 383.71) makes this standard applicable only to holding a hazmat endorsement. We believe that the current practice of most states is to issue CDLs to other classes of aliens and in fact, it may be the practice of some states to issue CDLs to undocumented aliens. We believe that either the TSA rules or FMCSA rules, or both, should specifically refer to this position and extend it to all CDL holders and not just to hazmat applicants and holders. Unless your interpretation is more clearly stated in the rules, Connecticut and most other states may continue to issue CDLs to numerous aliens who do not have the status of permanent residents. The different standards that exist among the states also contributes to the problem of whether or not a new state of residence should accept a CDL issued by another state.

2. Section 1572.5(e) prescribes a new state application form for all hazmat CDLs. Applicants will be required to certify that they meet all the background standards, as specified in this rule. In certain cases, hazmat applications that are made to CTDMV (and presumably that are made in all other states) will be denied at the state level. This will be the result of the fact that the applicant is unable to produce supporting documentation, or that CTDMV is already in possession of contrary information concerning the applicant (for example, that the applicant is not a permanent resident, or is wanted for a disqualifying crime, or has a known conviction record). (CTDMV already does criminal background checks on school bus drivers and certain other CDL holders.)

The rule states that all applications must be forwarded to TSA. However, are we correct that CTDMV will not forward an application to TSA that has been denied, or withdrawn by the applicant? Or, would TSA want to require that such information be submitted by the states, concerning such applications denied at the state level?

3. We are still somewhat confused by the effective date provisions as contained in Section 1572.5(c) (2) (i) and (3) (i). This section of the rule appears to state that CTDMV may not issue, renew or transfer a hazmat CDL on or after November 3, 2003 unless CTDMV has received a notification of no security threat from TSA. However, the rule goes on to state that CTDMV may extend an existing hazmat endorsement "from November 3, 2003 to April 24, 2004 while TSA is conducting a security threat assessment." [emphasis added]

How will CTDMV know that the assessment is being conducted with respect to any given individual? Does the rule require that we know this, or is the intent of

the rule to allow states to extend endorsements until that date, unless we receive notification from TSA, concerning an individual, prior to that date?

4. We believe that the definition of "convicted" in Section 1572.3 is inadequate. We believe the definition of "conviction" that appears in Section 383.5 of the CDL regulations has proven to be satisfactory from a legal standpoint and we suggest that the same definition be adopted.

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in black ink that reads "John Yacavone". The signature is written in a cursive, flowing style.

John Yacavone  
Bureau Chief  
Bureau of Legal Services

cc: Commissioner Gary J. DeFilippo